IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

D.B. Civil Special Appeal (W)
No.744/94
Shri Krishna Kumar Rawat & Ors.
Vs.
Union of India & Ors.

D.B. Civil Special Appeal (W)
No.188/05
Smt. Mithilesh Kumari Vs. Shri Krishna
Kumar Rawat & Ors.

Date of Order :: 31st May, 2007

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Shri Paras Kuhad with
Shri Sandeep Taneja for appellants in
SAW No.744/94.

Shri B.L. Sharma, Sr. Advocate with
Ms. Raj Sharma for appellant in
SAW No.188/95

Shri J.K. Singhi with
Shri Anuroop Singhi for respondents in
both the appeals.

(Per–Hon'ble Shri Mohammad Rafiq, J.)

These two special appeals are directed against the judgment of the learned Single Judge dated 14.9.1994 in

the writ petition filed by the appellant Krishna Kumar Rawat and three others in which appellant Smt. Mithilesh Kumari was a respondent. Factual matrix of the case is that petitioners Krishna Kumar Rawat, Ashok Kumar Rawat, Ravindra Kumar Rawat and Rajindra Kumar Rawat were intending buyers of a property located at khasra no.126 of Village Durgapura in Tehsil Sanganer of District Jaipur, which now forms part of Jaipur City. This property consists of a plot area admeasuring 9500 sq. yards / 7945 sq. mtrs. with two godowns and certain other structures. The appellant Mithilesh Kumari (for short- the vendor), the owner of the property, entered into an agreement to sale dated 18.12.1993 for sale of the aforesaid property in favour of the prospective buyers for a consideration of Rs.99,84,500/-. The sale price was calculated at the rate of Rs.1051/- per sq. yard and a sum of Rs.40,00,000/- was paid in advance by the prospective buyers to the vendor vide cheque dated 18.12.1993. It was agreed between the parties that they shall obtain a certificate in Form 37-I of the Income

Tax Act and within one month thereafter the sale deed shall be got executed. According to the prospective buyers however the actual possession of the said property i.e. Godown no.13 and 14, guard room and office premises was delivered to them and with respect to 1/4th undivided share of the remaining open land, only symbolic possession was delivered to them on 18.12.1993. The appellants furnished the required information about the agreement to sale in accordance with the provisions of Section 269UC of the Income Tax Act to the Appropriate Authority of the Income Tax Department in form No.37 I together with agreement to sale and statement of transfer of the property. The Valuation Officer of the Appropriate Authority of Income Tax Department thereafter vide his letter dated 18.1.1994 informed the appellants that he would like to inspect the property on 21.1.1994 and demanded certain informations. It is stated that the appellants furnished the required information to the Valuation Officer who was later learnt to have submitted a report to the Appropriate Authority. The

Appropriate Authority after receiving the report from the Valuation Officer issued a show cause notice to the appellants on 8.3.1994 under section 269 UD(1A) of the Income Tax Act, 1961 stating therein that apparent sale consideration as disclosed by the appellants was on lower side for various reasons and that in fact the value of the land was much higher than the agreed rate. It was stated that a plot of land at A-90, Triveni Nagar near Durgapura Railway Station was sold by Jaipur Development Authority on 7th November, 1992 in auction @ Rs.1781/- per sq. mtrs. The Appropriate Authority also pointed out that if an adjustment of -5% on account of less development, -10% on account of general condition of plot of the property and +12% on account of difference in time were allowed and with deduction of 5% being allowed, the rate of the plot would work out to Rs.1692/- per sq mtrs and on that basis, the value of the land measuring 9,500 sq. yard / 7,943 sq. mtrs. x 1692 would work out to Rs.1,34,39,556/- as against the price of Rs.99,84,500/- declared by the appellants in Form No.37-I. The appellants were

therefore required to show cause as to why the preemptive purchase order u/s. 269UD(1) of the Income Tax Act was not made and were asked to appear before the Appropriate Authority on 21.3.1994 at 10.30 PM either personally or through their representative.

The prospective buyers and the vendor both separately submitted their reply / objection to the show cause notice on 21.3.1994. The vendor submitted that comparison of a small developed plot of land in Triveni Nagar was not justified. It was submitted that development of a land according to rules would need 40% of the land to be left for amenities like park, roads etc. Moreover they would be required to incur the costs of development of roads, electricity, water supply and other civic amenities. The piece of land would therefore be required to be sub-divided into plots. The prospective buyers in their separate reply to the show cause notice contended that in notification of the Sub-Registrar, Government of Rajasthan, Jaipur the market price of the land in Durgapura area as on 1.4.1991 for the

first category has been fixed at the rate of 550/- per sq. mtrs and in the second category at the rate of Rs.450/- per sq. mtrs and if 12% on the aforesaid amount is added on account of time element of two years, this would work out to Rs.690/- per sq. mtrs. Besides, sub-division of the property would be required to be got approved from JDA which would mean leaving 30% to 40% of the land open for roads and parks and incurring cost for development of such roads, parks, water supply and provision of electricity and cost of demolition of the present structure and removal of debris would require atleast six months. The prospective buyers submitted an additional representation on 24.3.1994 that a piece of land similar to the one cited in show cause notice situated in Triveni Nagar Scheme measuring 116.13 sq. mtrs. was sold on 3.6.1993 for a sum of Rs.1,00,000/- at the rate of Rs.861.10 per sq. mtrs. The Sub-Registrar fixed the market value of such land for registration purpose at the rate of Rs.1,043.05 per sq. mtr as per the rates prescribed by District Advisory

Committee. Reference was given to the order of the JDA dated 4.11.92 according to which reserve price for lands in Durgapura area was fixed at the rate of Rs.600/- per sq. mtrs for residential purposes.

The Appropriate Authority of the Income Tax Department passed an order u/s. 269 UD(1) of the Income Tax Act on 30.3.1994 and by virtue of powers vested in it under that section, ordered compulsory purchase of the disputed property by Central Government at an amount equal to the said apparent consideration. The Appropriate Authority by the aforesaid order instructed his office to serve on the appellants a copy of the order made by it for purchase of the aforesaid property by the Central Government and further stated that according to the provisions of sub-section (1) of Section 269UE the said property now vested in the Central Government from 30.3.1994. The appellants were directed by letter dated 30.3.1994 to deliver possession of the said property to Shri R.S. Sagar, DVO, Income Tax Department, Jaipur. Shri R.S. Sagar

vide his letter dated 6.4.1994 directed the appellants to intimate the date and time of the intended physical handing over of the said property to him.

The preemptive purchase order dated 30.3.1994 was challenged by the prospective buyers by filing writ petition on 15.4.1994. The learned Single Judge upon hearing the prospective buyers, the Income Tax Department as also the vendor dismissed the writ petition by his judgment dated 14.9.1994 which is under challenge in these appeals filed both by the prospective buyers and the vendor.

We have heard Shri Paras Kuhad, the learned counsel for the appellants / prospective buyers in SAW No.744/99, Shri B.L. Sharma, the leaned counsel for the appellant / vendor in SAW No.188/95, Shri J.K. Singhi and Shri Anuroop Singhi for the respondents.

Shri Paras Kuhad, the learned counsel for the appellants / prospective buyers argued that the learned Single Judge failed to consider the specific facts mentioned by the petitioners-appellants specially those with regard to

determination of fair market value of the property. He argued that the preemptive purchase order passed by the appropriate authority was liable to be set aside because such authority was required to ascertain the market rate prevalent in respect of the land similar to that of the land in dispute both from the point of view of the nature of the land and its location. If the market rates adopted for the comparison, were the rates applicable in respect of a totally different type of land, cost of converting the land under preemptive purchase to the kind of the land whose rates were being adopted for the purpose of comparison had to be accordingly worked out. The Appropriate Authority has however failed to do so. It adopted the rates of a developed residential building plot whereas the land in question was an undeveloped large agricultural plot of land. Such comparison therefore could not be made without providing for adequate deductions towards the cost of development and the area to be lost for providing roads, parks and other civic amenities in the process of sub-dividing the property into

small developed plots. The learned Single Judge erroneously refused to examine the legality of the preemptive purchase order on the ground that the power of judicial review under Article 226 of the Constitution was available only to the extent of examining as to whether any perverse finding has been recorded by the authority or the order suffers from non application of mind or further whether the order is contrary to established principles of law. Shri Paras Kuhad therefore argued that learned Single Judge overlooked the scope of judicial review on such matters as enunciated by the Hon'ble Supreme Court in C.B. Gautam Vs. Union of India , (1993) 1 SCC 78, wherein it was held that there being no right of appeal or revision, the aggrieved party in a proceeding before High Court can demonstrate that the reasons adopted by the Appropriate Authority while passing an order of preemptive purchase were erroneous, irrational or irrelevant. It was further held that on account of absence of the provision for an appeal under the Income Tax Act, judicial

scrutiny in respect of exercise of power under Chapter XX-C also extends to a scrutiny whether the order is erroneous, irrational or based on irrelevant considerations which would mean that the merits of the preemptive purchase order also are amenable to judicial review under Article 226 of the Constitution. It was argued that the learned Single failed to appreciate that right of preemptive purchase can be exercised only if the fair market value is found to be at least 15% more than the apparent consideration. The onus of establishing that the conditions of taxability were fulfilled was always on the Revenue. The right of preemptive purchase order could be exercised only if the Appropriate Authority arrived at the conclusion that the assessee had actually received a larger consideration for the transaction than what was declared in the instrument of transfer. In the instant case, contrary to what was held by Hon'ble Supreme Court in C.B. Gautam, the learned Single Judge has held that 15% margin covered the remaining part of the valuation, so that no injustice is done

while acquiring the property. It was therefore argued that learned Single Judge was not correct in holding that the right of preemptive purchase by the Central Government for an amount equal to the amount of apparent consideration has to be exercised to relieve the transferor of any grievance. Shri Paras Kuhad further argued that the Appropriate Authority erred in law in accepting the rates notified by the government for registration of the conveyance deeds which have since received legislative recognition in newly inserted provision of Section 50C of the Income Tax Act. The learned Single Judge has thus proceeded to pass his judgment on the basis of presumptions and surmises, the impugned judgment is therefore suffer from error apparent on the face of the record. It was argued that learned Single Judge was not correct in holding that the market value of the land has to be adopted merely looking at the rates prevalent in the market in the locality or situation of the plot and the potentiality of its use. The learned Single Judge on that basis in fact refused to examine the

correctness of the preemptive purchase order which in fact was based on erroneous, irrelevant and irrational reasons.

Shri Paras Kuhad argued that the determination of fair market value of the Appropriate Authority was wholly illegal because it was based on adoption of a totally incorrect price of the disputed land taking it to be a developed plot on the basis of the solitary example of auction sale dated 7th November, 1992 of plot no.A-19, Triveni Nagar, Jaipur. Adoption of such rate was unrealistic and totally incorrect as was evident from the price reflected under the sale-deeds of other developed plots in Triveni Nagar itself namely plot No.B-44 and A-256 which related to the transaction of sale carried out in the month of June and July, 1993. According to such sale transactions, the market rate that was determined was Rs.1,300/- per sq. mtrs. The Appropriate Authority also failed to consider that while the price adopted for comparison was that of a developed building plot, the property in question was a larg undeveloped tract of

agricultural land and if for the purpose of comparison, the price of the developed building plot was to be adopted, the cost of converting the undeveloped land area into developed building plots of small sizes was also required to be taken into consideration.

The learned Single Judge however refused to determine either the extent of saleable plot area that was likely to became available upon sub-division and consequential development of undeveloped land in question, which would have required the loss of land for making provision of the roads, parks and other civic amenities according to these sub division rules. The learned Single Judge failed to examine the correctness of the market rate of developed plots adopted by the Appropriate Authority with reference to sale deed of other similar plots located in the same area and more proximate in point of time and was not correct in holding that such recorded sales may or may not reflect the correct market price. The learned Single Judge having held that market value has to be determined looking to the rates prevalent

in the same locality, situation of the plot and potentialities of its use, omitted to consider the disadvantages attached to the land of undeveloped large agricultural area, which for the purpose of development would essentially require huge costs to be incurred and leaving out nearly 30% to 40% for the purpose of facilities. The learned Single Judge refused to examine the comparable sale price reflected from the transactions cited by the appellants on the ground that this was a question of fact and could not be examined under Article 226. At the same time, however, the learned Single Judge approved the adoption of the rates with regard to the residential plots situated in the same colony of which instances were given by the appellants. Such reasonings were therefore mutually contradictory and totally inconsistent. In any case, Triveni Nagar not being the closest locality, there being four other localities absolutely adjacent to the area in question,comparison with the plot of Triveni Nagar could not be made. If at all the rates of the nearby plot area for

the purpose of comparison were to be taken, such comparison ought to have been made on the basis of sale transactions of the plots in the adjacent localities. The authorities could not in isolation have picked up the sales reflecting the price of the transaction which took place in December, 1992. The Appropriate Authority committed an error of law in adopting the market rate of a developed building plot and applying the same to an undeveloped covered area bearing industrial godown. The impugned order of preemptive purchase was therefore vitiated under law. When comparison for the purpose of valuation was made with a developed vacant residential plot, the property in question was also required to be reduced to the status of residential development vacant building plot before the comparative rates could be adopted or in the alternative the property should have either been valued by treating it as a commercial property or as an industrial property. If it was to be treated as the commercial property then the valuation has to be made to the extent of area that would have been available according to

the plans approved by the JDA which would have meant loss of about 85% of the total area being integral and concomitant to the development of the property as commercial property. The learned Single Judge was therefore not right in adopting the rates in the commercial area and refusing to take into consideration the area that was to be lost on that account as per already approved plans. Similarly if the valuation of the property was to be done by taking it as an industrial property, the value of the land underlying the industrial godown could not have been assessed with reference to the price applicable to residential building plots and the value of the godown were to be taken into consideration together with the loss in the value of the land arising on account of its reduction in the form of industrial land. Since the industrial land available in the vicinity was valued at Rs.100/- per sq. mtrs only, the alleged value of the godown at Rs.42 lacs, as assessed by the authorities was wholly unrealistic. The learned Single Judge failed to appreciate that Form

No.37 I was filed on 31.12.1993 and show cause notice was served on 11.3.1994 i.e. 70 days after filing of the returns and therefore the Appropriate Authority was not justified in rejecting the request of the appellant for grant of at lest 15 days time for collecting complete evidence and placing it on record in support of the facts stated by them. The learned Single Judge failed to appreciate that the appellants were at no stage called upon to show cause as to why the property be not treated as commercial property and the godowns in question may not be valued at Rs.42 lakhs. The mandatory requirement being that for passing the preemptive purchase order within 90 days, the loss of initial 70 days meant only 20 days being available to the authority for determination of the proceedings under Chapter XX-C which occasioned failure of justice because reasonable opportunity was not provided to the appellants for defending their case. The learned Single Judge failed to appreciate that no show cause notice was issued by the department to the other interested person namely the co-owners of

the open land forming part of the property who was very much interested persons within the meaning of Chapter XX-C of the Income Tax Act and non service of notice upon her vitiated the entire proceedings. The order of preemptive purchase was merely based on surmises and conjectures without there being any credible material to suggest any attempted evasion of tax. While notice was given to the appellants on different grounds but the ultimate order that has been passed on 30.3.1994 is based on a totally different consideration. It was not within the competent of the Appropriate Authority to travel beyond the scope of show cause notice.

Shri Paras Kuhad further argued that the Appropriate Authority had apparently considered the report of the Valuation Officer but copy of the report of the Valuation Officer was not supplied to the petitioner. This clearly prejudiced the case of the petitioner because it was obligatory upon the Appropriate Authority to supply a copy of the same to the petitioner. The copy of the Valuation Report has been placed on

record by the vendor / appellant along with an application filed at the time of hearing and Shri Paras Kuhad on that basis argued that while other factors with regard to deductions on the rates of comparable sales price of A-19, Triveni Nagar were mentioned in the show cause notice as also in the impugned order but the factor with regard to deduction of -10% for encumbrance due to built up structures on the plot and further deduction of -10% for joint ownership as suggested by the Valuation Officer were completely withheld by the Appropriate Authority. This according to Shri Kuhad vitiated the impugned order and violated the requirement of reasonable opportunity of hearing being provided to them in terms of Section 269UD(1A). It was argued that the learned Single Judge failed to appreciate that major part of the property was in the nature of undivided open land, dimension and location of which were uneven and the possession having not taken place, therefore, the land covered by road and other amenities and it was not known as to by what time possession as also the ownership right of

the same was likely to be available to the prospective buyers. Such land area being totally incapable of being used in gainful manner, till the dispute with regard to its dimension was resolved by the different co-owners, it could not be valued without reference to these encumbrance factors. It was argued that learned Single Judge failed to correctly appreciate the principles of law enunciated by Hon'ble Supreme Court in various judgment of Hon'ble Supreme Court in Rakesh C. Rastogi & Anr. Vs. Appropriate Authority & Anr., (2002) 10 SCC 335, Appropriate Authority & Anr. Vs. Kailash Suneja & Anr., (2001) 6 SCC 565, C.B. Gautam Vs. Union of India & Ors., (1993) 1 SCC 78, Usha Kulkarni & Ors. Vs. Union of India & Ors., 1996 ITR 190 (Vol.219), E. Vittal & Anr. Vs. Appropriate Authority & Ors., 1996 ITR 760 (Vol.232), Himmatlal Vadalia & Ors. Vs. Union of India & Ors., 1998 ITR 854 (Vol.232), Appropriate Authority & Anr. Vs. Smt. Varshaben Bharatbhai Shah & Ors., 2001 ITR 342 (Vol. 248), Brig. Sahib Singh Kalha Vs. Amritsar Improvement Trust & Ors., 1982 AILACC

593 (Suppl.), Appropriate Authority of Income Tax Vs. Jagdish Electricians India Pvt. Ltd. & Ors., 2003 ITR 468 (Vol.264) (SC), Sona Builders Vs. Union of India & Ors., 2001 ITR 197 (Vol.251) (SC), Dr. Anand Prakash Vs. Appropriate Authority, 2006 ITR 395 (Vol.287) (Del.), Musthafa Ummer & Anr. Vs. Appropriate Authority & Ors., 2001 ITR 134 (Vol.254) (Ker.).

Shri B.L. Sharma, the learned Senior Counsel appearing for the vendor argued that the disputed property is part of the lands of khasra no.126 admeasuring 17 bighas and 12 biswas which was jointly purchased by Smt. Mithelesh Kumari and Smt. Krishna Roongta vide sale deed dated 17.6.1970. While Mithelesh Kumari who is the vendor had 25% share in the property, but Smt. Krishna Roongta's share was 75%. Bank of Baroda advanced loan in the sum of Rs.42 lacs for construction of 15 godowns on the said land. Godowns were constructed in the year 1977 and let out to Food Corporation of India in 1978. Though the unregistered partnership firm with 10 partners was formed in the year 1977 and with an addition of three more partners there were 13 partners in the

year 1979 which number fell down to 12 in the year 1984, but this partnership was meant only for the purpose of saving income tax. None of these partners except 1 and 2 had any title in the land. The vendor agreed to sell part of her share to the intending buyer on 11.11.1993 and handed over possession of the property by getting the same measured by metes and bounds in the presence of notary public on 18.12.1993. This fact was verified from the valuation report dated 9.2.94 prepared by Shri R.S. Sagar, the Valuation Officer, wherein he has categorically on page 2 of the report stated that property is free from any encumbrances / encroachments. This fact was further proved when the Appropriate Authority inspected the site in the last week of March, 1994 in the presence of all concerned and recorded in its order dated 30.3.94 that the possession of the property has also been handed over to the transferees and they are usefully enjoying the same instead of making payment of rent etc. to the transferor. They therefore noted that no element of interest was considered while working out

the market value of property on the date of agreement. No objection was raised by the intending buyers to these observations of the competent authority at that time or at any time in near future thereafter. But when Shri R.S. Sagar, the District Valuation Officer, again visited the site on 13.4.1994, he merely on the basis of oral complaint of Smt. Roongta made his observation in his letter dated 13.4.94 that the office place, situated on northern side of the property was found with the name-plate of Smt. Roongta which was earlier in possession of the transferee. It was argued that this showed the complexity of the authorities with Roongtas. There was absolutely no basis for such an inference as Smt.Krishna Roongta herself was never impleaded a party by the prospective vendor. In fact, Smt. Krishna Roongta in her own right filed a partition suit of the remaining property between her and the vendor herein. She had nothing to do with the proposed sales of the property by the vendor to the prospective buyer. The prospective buyer is not only in possession of the land in dispute but

also obtained a stay order in respect of possession and result of this was that while the vendor was all through deprived of the possession of the land, but she could not get its rent for last more than 14 years and nor could she receive the full sale consideration. The part payment of Rs.98 lacs as would be seen from the statement furnished to this Court, was made in big and small amounts spread over last 14 years. Valuation of the property has now increased to Rs.20 to 25 crores. It was submitted that the vendor had served a notice on the prospective buyer on 27.4.2005 to pay an interest of 20% per annum in addition to the contracted amount. The balance amount payable on as 31.3.2005 was more than Rs.285 lacs. The learned counsel placed reliance on the judgment of Hon'ble Supreme Court in 195 ITR 227 and argued that Hon'ble Supreme Court in that case directed that panel interest would be payable if the amount of interest is wrongly retained. It was argued that a prospective buyers herein being in possession of the property made huge additions and alterations therein by adding more floor area and thereby

created sprawling show rooms. They also constructed huge industrial sheds and rented out the office building and the guard room and they are also earning money by renting out the open area for social functions like marriage and party etc. Reference was made to the letter dated 18.5.1994 written by Valuation Officer to the Appropriate Authority. The Valuation Officer in that letter has recorded that when he went to take over the physical possession of the property, for one reasons or the other, inability was shown by the prospective buyers to hand-over the possession and time was sought, which was nothing but an exercise to purchase time and finally on 22.4.94 produced a copy of the status quo order passed by this Court. It was therefore prayed that vendor having been unduly deprived of her property on account of status quo order passed in the writ petition and the appeal of the prospective buyer, this Hon'ble Court while directing them to return of the property to the vendor may also direct them for payment of the rent for the intervening period or alternatively

direct payment of the sale consideration at the present market rate.

Shri J.K. Singhi and Shri Anuroop Singhi appearing for the respondents-Union of India in both the appeals, supported the order of the Appropriate Authority and also the judgment of the learned Single Judge. Shri J.K. Singhi, the learned counsel argued that the Appropriate Authority has passed the impugned order after due compliance of the provisions contained in Chapter XXC of the Income Tax Act. A comprehensive show cause notice was served on the prospective buyers as well as the vendor and replies thereto submitted by them were duly considered while passing the impugned order dated 30.3.1994. A protracted enquiry or a prolonged hearing is not envisaged under the law as the proceedings under Chapter XX-C of the Act, besides being summary in nature, are required to be complied within given time frame of three months. It was denied that the part of the Valuation Report was withheld. The fact is that the gist of the report was incorporated in the show cause notice. The Appropriate Authority

has given valid reasons for determining the value of the land with the comparable lands. Valuation of godown is based on acceptable mode of valuation adopted by Central Public Works Department of Government of India. Reasonable opportunity was provided to the petitioner prior to passing of the impugned preemptive purchase order. Show cause notices to the prospective buyers were issued on 8.3.1994 requiring them to submit their reply and appear on 21.3.94. They filed their objections on 21.3.94 as well as on 24.3.94. In neither of those objections did the appellants raise any objection about the reasonable opportunity being not provided to them. It was argued that no notice was required to be issued to other co-shares of the disputed property / partners of the unregistered firm because the assessee in point No.4 of Form 37-I declared the vendor Smt. Mithilesh Kumari being the absolute owner of the disputed property as the only interested person. Besides, no objection was raised by any one else either before the Appropriate Authority or even before this Court. It was argued

that the valuation on the basis of the rates notified by the Government for the purpose of registration of conveyance deeds under the Rajasthan Stamp Act was not relevant for deciding the controversy in question. Reliance placed by the appellants on Section 50 C of the Income-tax Act was wholly misplaced because it merely provided for adoption of Valuation made by the Stamp Valuation Authority only when the value adopted and the consideration received by the assessee as a result of transfer of capital asset is less than the value assessed by such authority. Besides Section 50-C being a newly introduced provision, has been made effective prospectively from 1st April, 2003. The learned counsel for the appellant relied on the judgment of Hon'ble Supreme Court in Appropriate Authority & Anr. Vs. Smt. Sudha Patil & Anr., 235 ITR 118 (SC), Union of India & Ors. Vs. Shatabadi Trading & Investment Pvt. Ltd. & Ors., 251 ITR 93 (SC), C.B. Gautam Vs. Union of India & Ors., 199 ITR 530 (SC). Referring to the judgment of Hon'ble Supreme Court in Sudha Patil, supra, he argued that the Hon'ble Supreme

Court in that case held that if two views are possible on the basis of available material, one which has been given by the inferior Tribunal and the other which the High Court may, on examining the material itself, come to a conclusion, then also it would not be possible for the High Court in exercise of its powers of judicial review to substitute the conclusion reached by the Tribunal. In that case, the preemptive purchase order was upheld by the Hon'ble Supreme Court. Learned counsel relied on the judgment of Hon'ble Supreme Court in Shatabadi Trading, supra, and argued that in that case it was held that the power of judicial review is available to the extent of examining the decision making process but not the decision itself. If the basis of valuation has been disclosed to the party concerned in the show cause notice in sufficient detail, even if other report such as the Valuation report, was not made available, that may not affect the decision itself. Non supply of the valuation report in that case was held to be not fatal to the validity of the preemptive purchase

order. The learned counsel therefore argued that the necessary contents forming valuation as also the allowable deductions were duly mentioned in the show cause notice and in the preemptive purchase order, while arriving at the valuation of the said property. There was therefore no illegality, merely because the valuation report was not supplied to the assessee and deductions in some of the parameters referred by the valuer were not adopted by the Appropriate Authority. He argued that in Shatabadi Trading, supra, it was held that where the Appropriate Authority “having given due deductions towards tenancy arising in respect of the property and on comparison with similar properties situated elsewhere, though not tenanted, but after discounting for the tenancy if a mode of valuation is adopted by the Department, the High Court should not have termed the same as illegal, irrational or arbitrary.” Referring to the Constitutional Bench judgment in C.B. Gautam, supra, it was argued that the Hon'ble Supreme Court in that case while upholding the validity of Chapter XXC

considered the aspect that the time frame within which compulsory order of purchase has to be made is fairly tight one held that the proceedings should be carried out with a sense of urgency. It was held that even if after an opportunity is given to the assessee, the Appropriate Authority considers appropriate, it may hold an enquiry even though such enquiry has to be summary in nature before passing a compulsory purchase order. The reasonable opportunity of hearing is therefore to be consistent within the available time frame. The assessee cannot insist on detailed and protracted enquiry. It was argued that this Court on 19.4.1994 passed an interim order to the effect that the status quo shall be maintained by the parties and the period from which the stay order remains in operation shall be excluded for making the payment by the respondents to the seller. This order was later confirmed on 27.5.1994 with a clarification that in case the impugned order is found to be untenable in law, the vendor shall be entitled to reimbursement for the loss occasioned to her. Considering the fact

that the vendor may not suffer the loss of interest, the department deposited the amount of Rs.42 lacs payable to her in a fixed deposit. The said amount has earned interest and now having continuously earned interest increased substantially. Shri J.K. Singhi, argued that the learned Single Judge has dealt with all the arguments in great details and has rightly upheld the preemptive purchase order by dismissing the writ petition. It was therefore prayed that the writ petition be dismissed.

We have given our thoughtful consideration to the rival arguments and perused the impugned judgment and also the other material available on record.

We must at the outset begin with noticing the scope of interference under Article 226 of the Constitution of India which by now stand well defined following catena of judgments by Hon'ble Supreme Court. While examining the validity of preemptive purchase order of the property under Chapter XX-C of the Act, this Court in exercise of its powers of judicial review can interfere only if it finds that (i)relevant material has been

ignored or (ii)irrelevant or erroneous material has been considered or (iii)it has been passed in utter violation of principles of natural justice or (iv) there has been infraction of any statutory provision in the process of decision making or (v)decision is such which no reasonable person could on available material arrive at. The Court has to keep in mind that the Appropriate Authority is a multi member body which is constituted independent of the departmental hierarchy and is expected to function as an autonomous body with separate administration and infrastructure. It consists of three members, two of whom are Group-A Officers drawn from Indian Income Tax Service holding the post of Commissioner of Income Tax or an equivalent or higher post and one from the Central Engineering Service Group-A holding the post of Chief Engineer or any equivalent or higher post. In passing the order of preemptive purchase, the Appropriate Authority has been charged with the duty of disclosing to the affected party / parties, the material which is sought to be relied on and then provide an opportunity of hearing. In

order therefore to scrutinize the validity of the order, the Court has to examine the decision making process and not the merits of the decision itself so as to arrive at a different conclusion and substitute it for that of the Appropriate Authority. Functions of the Appropriate Authority being akin to that of a quasi judicial body, therefore, its order are subject to judicial review within the scope available for writ of certiorari. At the same time, however, this power of judicial review would not extend to the status of the appellate powers and for that matter, revisional powers where the scope of interference is much wider. It is within this available scope of interference that the learned Single Judge examined the validity of the impugned preemptive purchase order and upheld the same and we have to now in this appeal examine the correctness of the judgment passed by learned Single Judge which exercise in effect would also extend to examining validity of the impugned preemptive purchase order on the grounds that have been raised before us.

Argument that the Appropriate

Authority while basing its order on the comparable sale price of developed residential plot A-19 of Triveni Nagar sold by JDA on 7.11.1992 ignored the sale price of other comparable lands in that very colony of plot no.B-44 and A-256 needs to be examined first. A perusal of the para 9 of the impugned order for preemptive purchase shows that the Appropriate Authority held that plot No.B-44, Triveni Nagar was not at all comparable because this property is near nullah and its surroundings are very poor and further that the sale instance of June, 1993 was not reliable as it has not been examined for preemptive purchase as the alleged apparent consideration is only Rs.1 lac. It also noticed the another sale instance of property at A-256, Triveni Nagar and stated that details thereabout were not made available by the appellants and as to the location of the property, it was found that this plot was also very close to the nullah and its surroundings were also very poor. The Authority therefore held that these sale instances could not be compared with the subject property. In

addition thereto, the Appropriate Authority also held that even the comparable sale instance of plot no. A-19, Triveni Nagar of the month June, 1993 which are relied by the department was located in the interior side of Tonk Road and the location of the disputed property was very close to the Tonk Road and therefore prestigious and valuable because development along Tonk Road was fast taking place. The learned Single Judge therefore did not commit any error in not upholding the said argument with which we also concur. For this reason therefore the impugned order of preemptive purchase cannot be held to have vitiated.

Another argument on which much stress has been laid by the leaned counsel for the prospective buyer is that the market rates of totally different type of land was adopted for comparison and therefore cost of converting the land under compulsory purchase to the kind of land whose rates have been adopted for the purpose of comparison have to be accordingly calculated. Learned counsel submits that if the land would have been

used for residential purpose, then it would have required 34% of the land area sub division of the land into plots of the small size for the purpose of common facilities such as roads, parks, open place etc. and would have necessitated spending huge money for laying of roads, developing parks, constructing drainage, sewerage and water supply and electricity supply and would have been required huge investments for carrying out all these developments. Learned counsel in this connection relies on the judgment of Hon'ble Supreme Court in Sahib Singh, supra, and Charan Deep Singh Estate Private Ltd., supra, and argued that the Appropriate Authority has refused to consider that developing land in question to the level of comparable property would require atleast 33% of the land price to be incurred towards the cost of carrying out such developments. But on examination of the impugned order of preemptive purchase, we find that the Appropriate Authority in para 8 of the order has categorically noted this argument with reference to Rule 11 of the Rajasthan Urban Areas (Sub-Division, Reconstruction

and Improvement of Plots, Rules, 1975 and noted that the said Rule provides that the saleable area would be about 66% and this may be more if the plot size is smaller but assuming that only 66% would have available area for sale, yet out of 7,943 sq.mtrs. an area equal to 5242.38 sq. mtrs. would have been available for sale. Appropriate Authority therefore by this alternative mode worked out the rate of the land on the basis of comparable sale instance i.e. 5242.38 sq. mtrs. by adjustment of time gap of +12% which then would come to Rs.1994.72 per sq. mtrs. It was noted that this was so because the deduction of 34% land contemplates absence of larger size as well as less development. On this basis the land value will be Rs.1995 x 5242.38= 1,04,58,548/-. Value of the constructed godowns of Rs.42 lacs being added thereto, total value of the said property would come to Rs.1,46,58,548/- as against declared apparent consideration of Rs.99,84,500/-. We do not find any error in the approach taken by the Appropriate Authority because deduction of 34% of the land for making the provision of civic amenities

like roads, parks, open spaces, electricity, water, sewerage, drainage, would essentially exclude the element of the land area being a large size agricultural chunk of land, which is the alternative argument made by the respondents and this would then also exclude the element of the land being less developed/under developed. In other words, making use of 1/3rd land would in fact make the remaining 2/3rd land developed and with the sub division of lands into plots of smaller sizes, it would no longer remain a large size undeveloped agricultural land. In fact, making provision of all these civic amenities and facilities by using 1/3rd of the land would considerably enhance its saleability and appreciate the value of the remaining 2/3rd of the land.

Argument of the appellants that the value of the land covered by godowns should be taken as nil because the cost of the godowns having independently been assessed, should include the element of the price of land it covers, cannot be accepted because it is more than evident that godowns were actually constructed

and were being used for storage purposes and earning profits. Similarly, the submission that since cost of removal of debris would be far more than the cost of construction of godowns, therefore value of godowns may be taken as nil, was also rightly not accepted by the learned Single Judge because so long such godowns exist and were being used for storage purposes, their value could not be assessed as nil on mere *ipse-dixit* of the appellants because till any other new plan was not prepared and on that basis existing structures were not demolished, they would continue to have the same commercial potential which they had been having so far. Learned Single Judge therefore rightly rejected this argument also on the premise that the appellants were carrying on their business from this place which was located near to Airport. Similarly, the argument raised by the learned counsel for the appellants that when the land was being used jointly by the partnership firm, they had submitted a plan to J.D.A. for commercial use of the land and only 15% of the land could have been used for commercial purpose

with remaining 85% being left for provision of facilities like roads, open places, parking, provision of water & electricity etc. In alternative, it is argued that if godowns are considered as industrial use, the land being situated close to an already existing industrial area, its value should be assessed @ Rs.100/- per sq.mtr. Both these arguments were rightly rejected by the learned Single Judge because the arguments were based on a mere hypothesis. The approved plan had come to an end with the dissolution of the firm and 1/4th of the land had come to the share of the vendor. These arguments were examined and rejected by the learned Single Judge because they were raised before him. Validity of a pre-emptive purchase order shall have to be adjudged on the basis of what is stated in that order and not on the basis of hypothetical arguments raised by the appellants before the learned Single Judge which had to be rejected because they were raised.

On this count also, we do not find that the impugned order passed by the learned Appropriate Authority suffers

from any legality so as to warrant interference by this Court in exercise of its power of judicial review.

There is then the argument that the Appropriate Authority was legally required to take into consideration various encumbrances that were attached to the property, such as 1/4th undivided part of the land of khasra no.126 which was yet not partitioned by metes and bounds, the proprietorship rights being subject to the co-owners right of first refusal and built up structures existing on the plots, location, non-availability of possession and effect of these factors on transferability and enjoyability of the property in relation to 1/4th undivided share. Before we proceed to examine the order the Appropriate Authority on this aspect of the matter, we have to consider the arguments which the appellants herein raised before the Appropriate Authority on this aspect, for validity of no such order can be examined on complaint of non consideration of any such argument without first ascertaining as to if such argument was raised and if so, in what manner. Reply submitted by

the vendor to the show cause notice dated 8.3.1994 merely stated that comparison of a small developed plot in Triveni Nagar sold by JDA having full civic amenities with a large size undeveloped land is much too far fetched. It was stated that development needed 40% land to be left for amenities like parks, road etc. apart from getting the sub-division plans approved by large number of governmental agencies and if all this is taken into account, the rate on which this deal has been struck is perfectly justified. It was additionally stated that the cost of demolition of existing structures and removal of debris would be far more than the cost of debris. No plea whatsoever as to encumbrance was taken in so far as the reply / objection of the vendor dated 12.3.1994 is concerned. Now similarly when we look at the reply to show cause notice dated 21.3.1994 submitted by the prospective buyers, it is found that their entire focus was on the comparability of the market value of the sale instance cited by the department as against the market value of the land in dispute and apart from raising the

argument similar to the vendor, reference was made to the rates notified by the Government for registration of conveyance deeds in Durgapura area and the fact that sub division of the land would require 30% to 40% of the land to be left for the civic amenities, cost of making provision for amenities, additional cost of demolition of present structures and removal of debris. A similar and subsequent reply / objection submitted by the prospective buyers on 24.3.1994 is also available on record. On perusal of this reply to show cause notice also, we find that arguments similar to the one raised in the previous reply dated 21.3.1994 were reiterated. But no argument as to the so called encumbrances attached to the property was raised in either of them. Now when we look at the memorandum of writ petition, it is found that the prospective buyers have raised as many as 22 grounds (a to v) as to the validity of preemptive purchase order and in last ground i.e. ground (v) only, the argument of encumbrances has been raised. It is in this context that we have to examine this argument.

Glance at the agreement to sale indicates that reference was made to the partnership deed dated 22.7.1979 between the vendor Smt.Mithilesh Kumari and Smt.Krishna Kumari Roongta, of which firm there were 13 partners in all. It was stated that said partnership firm was dissolved vide Dissolution Deed dated 31st March, 1986 and as per the stipulation therein, two godowns namely godown no.13 and 14 shown in yellow colour in the site plan enclosed therewith, fell into the share of the Vendor with 1/4th undivided share of the remaining open land. It was stated thus that “the Vendor is the absolute owner and in possession of the said godowns No.13 and 14 and ¼th undivided share in the open land of said Khasra No.126 which covers approximately 9500 sq. yards.” The agreement in clause (4) of its terms and conditions categorically stated that “Vendor shall get the open land partitioned by metes and bounds by specific demarcation within the period of two months from this day and will depict it clearly in the site plan.” In clause (5) it was stated that

“certificate under Sec.37(1) of the Income Tax Act shall be obtained by the parties and thereafter within a period of one month the Sale Deed shall be got executed.” Clause(8) of the agreement is also significant to note which inter alia provides that “the actual possession of the said property i.e. godown No.13 and 14, Guard Room and Office Premises and symbolical possession of 1/4th undivided share of the open land has been delivered by the Vendor to the Prospective Purchaser today”. All these terms so succinctly stated in the agreement when examined in the light of the subsequent developments, it would be clear that the Valuation Officer of the Appropriate Authority in his report categorically stated that property is free from any encumbrances and encroachments. In fact, when the Appropriate Authority inspected the site in the last week of March, 1994 in the presence of the buyers, it recorded in its order dated 30.3.94 that possession of the property has already been handed over to the transferees and they are usefully enjoying the same without making payment of any rent etc.

to the transferor. Shri R.S. Sagar, the District Valuation Officer when he visited the site again on 13.4.1994, he in his letter dated 13.4.1994 stated that on receiving direction from the Appropriate Authority vide letter dated 30.4.1994 and the letter dated 8.6.1994 and 12.4.1994 to the worthy Chief Commissioner himself, he had written to both the parties for handing over possession and fixed 13.4.1994 as the date for the purpose. The request was made to the transferee to get the area demarcated but nothing was heard from any of the parties. When the Valuation Officer visited the site on 13.4.1994 at about 11.00 AM for taking physical possession of the land, one of the prospective buyers, namely Shri R.K. Rawat was present there, in whose possession the property was. The Valuation Officer expressed his intention to take over the possession which was declined by the said Shri Rawat. No representative from the side of the transferor however was present but, the transferee asserted that he was not in possession of the office building etc.

including the outside space and stated that he was likely to take considerable period to vacate the place. The Valuation Officer in an application submitted to the Appropriate Authority on 18.5.94 has categorically stated that in spite of the fact that he invited attention of the transferor to para 4 of the agreement whereby the transferor had to get the open land partitioned by metes and bounds with a specific demarcation, she failed to get the demarcation done till date and thereafter when he went to the site on 22.6.94 the transferee produced copy of the status quo order passed by this Court. In fact, the vendor in her appeal before us is claiming means profit from the prospective buyers asserting that they have been during all these years earning huge profits by renting out offices as also open land area for social functions like marriage and party etc. Apart from the fact that the argument about the encumbrances being attached to the property was not raised before the Appropriate Authority, facts narrated above clearly show that despite possession of the godowns and office

premises etc. having been handed over to the transferee, both the transferee and the transferor adopted a non-cooperative attitude in getting the common land partitioned by metes and bounds, notwithstanding the specific stipulation to that effect in the agreement to sale that though symbolic possession of the 1/4th share has been handed over by the vendor to the prospective buyer on the date of agreement and the vendor shall get the open land partitioned by metes and bounds by specific demarcation within the period of two months from the date of agreement. The vendor thus deliberately avoided to perform her part of the obligation in the agreement. Neither of the parties can therefore be allowed to take advantage of such a situation. We therefore do not find any merit in this argument either.

Next submission made on behalf of the prospective buyers is that the Appropriate Authority in complete disregard of the principles of natural justice failed to furnish the material documents namely the Valuation Report which formed the basis for its tentative

conclusion with respect to purchase of the said property. In absence of supply of this important document, entire proceedings stood vitiated. In support of his arguments, Shri Kuhad relied on the judgments of Smt. Varshaben Bharatbhai Shah & Ors., supra, Jagdish Electricians India Pvt. Ltd. & Ors., supra, Sona Builders, supra, and Dr. Anand Prakash, supra. It was argued that the opportunity of being heard must be adequate and effective and in absence of material relied on by the Appropriate Authority while forming the tentative view, such opportunity would be a mere empty formality. This violated the principles of natural justice in as much as Article 14 of the Constitution. In order to examine this argument, we have to scrutinize the show cause notice to find out as to what was the basis which formed the foundation of the view taken by the Appropriate Authority. The Appropriate Authority considered the agreement to sale and the apparent sale consideration disclosed therein which was agreed to be paid at the rate of Rs.1051/- per sq. yards total of which comes to

Rs.99,84,500/-. The Appropriate Authority then relied on the comparable sale instance of Plot No.A-19 and disclosed its value at which this was sold by the JDA on 7.11.1992 i.e. at the rate of Rs.1,781/- per sq. mtrs. It was on that basis that the Appropriate Authority tentatively held that if an adjustment of -5% on account of less development, -10% on account of large size of the subject property and +12% on account of time gap is made, adjusting such value by -5%, arrived at the rate of Rs.1691.95 or say Rs.1692 per sq. mtrs. The Appropriate Authority then on that basis held that the value of land measuring 9,500 sq. yards or 7943 sq. mtrs. at the rate of Rs.1692/- works out to Rs.1,34,39,556/- as against apparent sale consideration of Rs.99,84,500/-. It was stated that the value so arrived did not include the value of the existing godowns as well as commercial potential of the front part of the subject property. What is therefore to be considered is whether in spite of the fact that the valuation report was available with the Appropriate Authority, on the basis of what has been stated in

the show cause notice can it be concluded that valuation report was such material which was relied on by the learned Appropriate Authority to arrive at the tentative view disclosed therein for making the order of preemptive purchase. Further argument is that the Appropriate Authority neither disclosed nor made basis of the deduction of -10% for encumbrances and -10% for joint ownership known to the appellants, which were suggested by the Valuation Officer. It appears that even though the Valuation Report was available with the Appropriate Authority but the basis of preparing such Valuation Report was comparison of the disputed property with the sale instance of plot A-19, Triveni Nagar at the rate of Rs.1781/- per sq. mtrs by JDA in the auction sale. The show cause notice served upon the prospective buyers and the vendor would thus clearly show that the foundation of the tentative conclusion arrived at by the prescribed authority was the sale of the Plot No.A-19 by the JDA in the auction sale on 7.11.92 and it was on that basis that the adjustment of -5% on account of less

development, -10% on account of large size of the subject property and +12% on account of time gap and adjustment in such value by -5% was given and this is how the rate of Rs.1692/- per sq. mtrs was arrived at and on that basis, the value of the land in the sum of Rs.1,34,39,556/- was worked out. It should thus be clear that so far as the basis on which the tentative conclusion was arrived at is concerned, the same was made known to the prospective buyers and the material relating thereto was also supplied. Can it therefore be said that merely because deduction of -10% on account of encumbrances and further -10% on account of built up structure etc. were not disclosed either by supply of the report of the Valuation Officer or the show-cause notice and that this has violated the principles of natural justice in as much as prejudiced the petitioner's right to defence. A reading of the show cause notice indicate that the price of the land Rs.1,34,39,556/- arrived at on the basis of comparable sale instance did not include the value of existing godowns and this was done

inspite of the Valuation Officer having suggested for deduction of -10% on account of built up structures. The Appropriate Authority in the show cause did not give deduction on that account and it categorically stated therein that the value arrived at by it did not include the value of existing godowns as well as commercial potential of the front part of the subject property. In para 7 of the impugned preemptive purchase order also the Appropriate Authority indicates that it was aware about the existing godowns bearing no.13 and 14, besides offices and guard room etc. and estimated value of the structures including godowns at Rs.42 lacs. The Appropriate Authority also noted that there was no need to demolish the property (godown) unless the propety was being exploited for better gains. In so far as however the encumbrances are concerned, the Appropriate Authority in para 5 of the impugned order clearly noted the fact about the partnership firm in the name and style of M/s. Rajasthan Industrial Company and the initial partnership dated 22.7.79 and 1.4.84 and dissolution deed

dated 31.3.86 and then proceeded to acknowledge the fact that the transferee Smt. Mithlesh Kumar was absolute owner of godown nos. 14 and 15 and 1/4th undivided share in the land which approximately comes to 9500 sq. yards including two godowns and land adjacent thereto. The Appropriate Authority therefore after due application of mind to the partnership deed as also the dissolution deed and the agreement to sale, came to hold that the vendor was absolute owner and had put the buyer in possession of the land of the said godowns Nos.13 & 14 and 1/4th undivided share of the land of Khasra No.126 measuring approximately 9500 yards including two godowns adjacent thereto. Both the factors of encumbrances and built up structures having thus been noticed and deliberated upon coupled with the fact that the material relating to comparable sale instance having been supplied to the prospective buyer and also in view of the fact the appellants did not take any such plea in replies to the show cause notices, mere non supply of the report of the Valuation Officer did not in any way violate the provisions

of Section 269 UD (1A) and for that matter the principles of natural justice. It is well settled that principles of natural justice cannot be put in a stract jacket formula and whether or not the requirements of such principles have been satisfied, would have to be decided on the facts of a given case. And in this case, in our opinion, facts show that they were coupled with.

Now coming to cited case law on the point. So far as the reliance placed by learned counsel on the decision of Hon'ble Supreme Court in Smt. Varshaben Bharatbhai Shah & Ors supra is concerned, that was a case in which the Revenue conceded before the High court about the relevant reports about valuation of the property having not been supplied to the prospective buyers. That case was therefore wholly distinguishable case. Similarly, Jagdish Electronic India supra was a case where show cause notice issued was found to be too vague and did not disclose the reasons thereof nor the material considered by the Appropriate Authority in reaching a tentative conclusion was disclosed. In that case,

copies of the documents relating to sales instance relied on by Appropriate Authority were not furnished by the prospective buyers along with notice whereas in the present case such material relating to sales instance of Plot No.A-19 in Triveni Nagar was duly disclosed in the show cause notice and material supplied to the prospective buyers. This case was also therefore distinguishable on facts. Delhi High Court in the judgment of Dr.Anand Prakash, supra, found that no documentary material collected by the Appropriate Authority was disclosed in the show cause notice and so it was held that this violated principles of natural justice. Musthafa Ummer & Anr., supra relied on by learned counsel Shri Paras Kuhad was again a case wherein it was held that it was necessary for the Appropriate Authority to supply all such material on which it has based its conclusion. Thus this does not render any help to the appellants.

Our conclusions are fortified from the ratio of the judgment of Hon'ble Supreme Court in Shatabdi Trading and Investment Private Ltd., supra, wherein

their Lordships of Hon'ble Supreme Court held that if the basis of the valuation had been disclosed to the party concerned in the show cause notice in sufficient details, even if other records such as the valuation reports were not disclosed or made available, that would not affect the decision of the Appropriate Authority. Their Lordships held as under:-

> “The basis of the valuation had been disclosed to the party concerned in the show cause notice in sufficient details. Even if other records such as the valuation reports were not disclosed or made available that may not affect the decision itself. The non-supply of the valuation report itself may not be vital to the case. For in this case the Department has given the details of the report in the show-cause notice itself which was issued and other materials having been made available to the party concerned, we do not think that there is justification for the High Court to interfere with the same on that ground.” (Page 98 of Report).

Their Lordships in Smt.Sudha Patil & Anr., supra, had the occasion to consider the scope of interference by the High Court in exercise of its supervisory

jurisdiction under Article 226 of the Constitution in such matters. We may in this connection usefully refer to relevant discussion in Sudha Patil wherein their Lordships while referring to the Constitutional Bench Judgment in C.B. Gautam expounded the scope for exercise of the supervisory jurisdiction by the High Court under Article 226 of the Constitution while examining the decision of the Appropriate Authority for compulsory purchase of property. Their Lordships held thus and we quote:-

> “The parameters for exercise of supervisory jurisdiction of the High Court under Article article 226 of the Constitution, while examining the decision of an inferior Tribunal, has no connection with the question whether an appeal is provided for against the said order of the Tribunal under the statute in question. As has been held in several decisions of this court, the power being supervisory in nature in exercise of such power, a finding / conclusion of an inferior Tribunal can be interfered with if the High Court comes to the conclusion that in arriving at the conclusion the Tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence

or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at. This being the settled position, it is difficult to sustain a plea that when the order of the Tribunal does not provide for an appeal, the High Court can get its jurisdiction enlarged and exercise an appellate power while examining the correctness of the conclusion arrived at by such Tribunal. In the case of C.B. Gautam v. Union of India (1993) 199 ITR 530 (SC) where the provisions of Chapter XX-C had been assailed as being ultra vires, the Constitution Bench of this court negatived the contention raised that the provisions are arbitrary, since no appeal or revision has been provided against the order made by the appropriate authority for compulsory purchase of immovable property on the ground that the provisions of the said Chapter could be resorted to only when there is an attempt at tax evasion by significant undervaluation of immovable property agreed to be sold and further reasons are required to be recorded and disclosed to the affected parties and opportunity to be heard is required to be given before making an order for purchase. This court ultimately came to the conclusion that the power of the appropriate authority is not arbitrary and the pre-conditions engrafted in the provisions must be satisfied for

invoking the power to make an order for compulsory acquisition. This being the position, we fail to understand how the supervisory power of the High Court while examining the correctness of the conclusion arrived at by such appropriate authority could get enlarged merely because there is no appeal or revision against the order of the appropriate authority. In the case of Kailash Sunaja (Mrs.) v. Appropriate Authority (1998) 231 ITR 318, the decision of the Delhi High Court on which the learned senior counsel for the respondent strongly relied, the learned judges themselves have indicated that the satisfaction of the competent authority for initiation of acquisition proceedings is a subjective satisfaction on the objective facts and the reasons for the determination of the belief must have a rational and direct connection with the material coming to the notice of the competent authority though the question of sufficiency or adequacy of the material is not open to judicial review. The learned judges of the Delhi High Court in the aforesaid case have themselves indicated that while exercising powers of judicial review under article 226 of the Constitution though the case is not to be examined as an appellate court, it is to be kept in view that a citizen has no alternative remedy and it is permissible to examine whether extraneous matters

> have been considered by the authority and relevant materials have not been taken into consideration. This statement of the Delhi High Court on which learned counsel for the respondent strongly relied, in our considered opinion, does not in any way enlarge the power of judicial review in the matter of exercise of supervisory power of the High Court under article 226 against an order of an inferior Tribunal. It may be stated here that on the materials if two views are possible, one which has been given by the inferior Tribunal and the other which the High Court may, on examining the materials itself, come to a conclusion, then also it would not be possible for the High Court to substitute its conclusion for that of the Tribunal. In the aforesaid premises, we are of the considered opinion that merely because no appeal is provided for against the order of the appropriate authority, directing compulsory acquisition by the Government, the supervisory power of the High Court does not get enlarged nor the High Court can exercise an appellate power."

There is yet another basis on which Shri Paras Kuhad, the learned counsel for the prospective buyers has argued that the prospective buyers were denied the reasonable opportunity of hearing and that is that the Form No.37-I

was filed by the parties on 31.12.1993 and the Appropriate Authority took almost 70 days in issuing show cause notice. It is submitted that the show cause notice was issued on 8.3.1994 and was received on 11.3.1994 requiring the appellants to file their reply on 31.3.1994. During this intergum of 12 days, there were two Saturdays i.e. 12.3.94 and 19.3.94 and two Sundays i.e. 13.3.94 and 20.3.94 and thereafter the State Government employees went on strike on 15.3.94. It is argued that because of the four holidays in between and the strike by the government employees, the appellants were precluded from collecting the relevant papers and to file an effective reply to the show cause notice and thus they were denied reasonable opportunity. Learned counsel in support of his arguments refers to provisions of Section 269 UD(1A) and relies on the judgment of Hon'ble Supreme Court in Sona Builders, supra. Apart from the fact that we are not impressed by the factual content of the argument because unlike in Central Government offices where they have five working days in a week, the State Government offices have

six days' working in a week, even if two show cause notices were issued on 8.3.1994 their still were 23 days with the appellants. Moreover the appellants having themselves furnished the requisite information in Form No.37-I to the respondents on 31.12.1993, they were cognizent of the fact that in the event of necessity, the enquiry under Section 269 UD being summary in nature, would have to be concluded within 90 days and therefore it was always open to them to collect and procure whatever material they wanted to rely in favour of the correctness of the apparent sale consideration. They submitted two separate replies/ objections respectively on 21/3/1994 and 24/3/1994 and in neither of them did the appellants complain of insufficiency or extension of time. Their Lordships in Constitutional Bench judgment of C.B. Gautam while considering validity of first proviso to Section 269 UD(1) of the Act and the requirement of completing an enquiry within the short time frame in para 29 of the Report held as under:-

> “It is true that the time-frame within which the order for compulsory purchase has to be made is a fairly tight one but, in our view, the urgency is not such as would preclude a reasonable opportunity of being heard or to show cause being given to the parties likely to be adversely affected by an order of purchase under section 269UD(1). The enquiry pursuant to the explanation given by the intending purchaser or the intending seller might be a somewhat limited one or a summary one but we declare to accept the submission that the time limit provided is so short as to preclude an enquiry or show cause altogether.”

Adverting now to the argument that it was known to the Appropriate Authority that the vendor was the co-sharer of a large chunk of the land of which part of the land was agreed to be sold to the prospective buyers and therefore the other co-shares namely Smt. Krishna Kumar Roongta was interested in the subject property as was evident from clause (4) of the agreement to sale and in fact she had served notices on the Income Tax Department disputing the transferability of the land, the Appropriate Authority in complete negation of the provisions of

Section 269 UD(1A) and violation of principles of natural justice did not provide an opportunity of hearing to Smt. Krishna Kumari Roongta. We are not able to countenance this argument because except for certain correspondence or notices by Smt. Krishna Kumari Roongta which were send soon after the Appropriate Authority served a show cause notice on the prospective buyer and the vendor under Section 269 UD, she has not taken any steps by submitting any objections before the Appropriate Authority or by joining the present proceeding at any state either before the Single Bench or before the Division Bench or even by an independent legal proceeding. We are therefore not inclined to hold that she had exercised her right of first refusal that was contained in the dissolution deed. That right having not been exercised in the manner required in law should therefore be taken to have been waived by her. And appellants in this case cannot be allowed to agitate this argument on her behalf by proxy when she has acquiesced in favour of proceedings of compulsory purchase. In

fact, Shri B.L. Sharma, the learned counsel for the vendor Smt. Mithilesh Kumar has submitted that even though the prospective buyer filed the writ petition but Smt. Krishna Kumari Roongta was never impleaded as party respondent therein nor she herself come forward to be impleaded as party. What is more, she herself has filed a partition suit which is confined merely to remaining ¾th part of the property and has nothing to do with the 1/4th share of the property with which we are concerned. We therefore do not find any substance in this argument raised by learned counsel as well.

Shri Paras Kuhad, the learned counsel for the petitioner then argued that the learned Appropriate Authority has committed an error of law in not giving any credence to the argument of the appellants that the rates notified by the State Government for the purpose of registration of conveyance deeds regarding lands in Durgapura area as on 1.4.1994 was only Rs.550/- per sq. mtrs for the lands of first category and Rs.450/- for the lands of second category and if 12% more was added on account of

time gap of two years, it would at the maximum come to Rs.690/-. He further argued that the JDA notified the reserve price for sales of the land in Durgapura at Rs.600/- per sq. mtrs for residential and Rs.1800/- per sq. mtrs for commercial purpose. We on perusal of the impugned order find that the learned Single Judge has rightly rejected this argument by holding that the reserve price fixed by the JDA, is the rate below which no sale can be made by it. We are in agreement with the view taken by the learned Single Judge because reserve price does not necessarily represent the true market value of the land since that is a point, from where the rates in so far as the transactions of JDA with common man are concerned, begins. JDA does not sale or allot a land to anyone below the reserve price but that cannot be taken to be the prevalent market value of the land and certainly not for the purpose of pre-emptive purchase order. Actually market rate is invariably much more than what is the reserve price of a given area. The learned Single Judge also rejected the argument that the rates notified by the

State Government for the purpose of registration of the conveyance deeds should be made basis for determining the market value under Chapter XX-C. It has rightly been held that the prescription of such rate does not take into consideration the difference in the value of the plots even in the same locality having different situation and therefore such rate does not given proper guidance for valuation for the purpose of preemptive purchase. Rates notified by the government for different areas form basis of charging stamp duty on registration of conveyance deeds before the registering authority under the provisions of Indian Stamp Act, 1899 which was applicable at the relevant time by virtue of Rajasthan Stamp Law (Adaptation) Act, 1952 enacted by the State legislature. Their Lordships of the Hon'ble Supreme Court in Painder Singh & Ors. Vs. UOI and Ors., (1995) 5 SCC 310 while considering this very question, albeit in the context of determination of compensation for the lands acquired under Land Acquisition Act, 1894, held that “the fixation by the Government of the

amount under Stamp Act for fiscal purpose bears no relevance to determine the market value under Section 23(1) of the Act.”

Shri Paras Kuhad, would then argue that since the Parliament has inserted Section 50C in the Income Tax Act, the legislative recognition should be read in that provision as to the sanctity of the rates notified for such registration purposes, even if such rates were notified earlier than the aforesaid amendment. Section 50C inter alia provides that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government i.e. stamp valuation authority, for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Apart from the fact that Section 50C was introduced by the Finance

Act, 2002 w.e.f. 1.4.03 and was not available when the subject compulsory purchase order was passed, this provision is limited in its application for the purpose of Section 48. But when we look at section 48, it is found that this Section relates to the mode of computation of the income chargeable under the head “capital gains” and can have no relevance for the purpose of passing a preemptive purchase order. Even then, if the strength of the argument is tasted, it is found what is intended by Section 50C is that if the amount as consideration received or accruing on transfer of property of an assessee and of its declared value, is less than the value adopted or assessed by stamp valuation authority for the purpose of payment of stamp duty in respect of said transfer, then the value so adopted or assessed by such stamp valuation authority shall be deemed to be full value of the consideration received or accruing as a result of such transfer. In other words, this provision by a deeming fiction has given supremacy to the valuation of the property made for the

purpose of charging stamp duty if eventually such valuation is higher than the value otherwise declared by the assessee for the purpose of Section 48. But this analogy can possibly have no application to the pre-emptive purchase order because areawise static rates are fixed uniformally for the purpose of registration of conveyance deeds, what is popularly known as DLC rates fixed by the district level committee. Such rates by themselves cannot be a conclusive index of prevalent market rate of the land in a given area. In fact, the learned Appropriate Authority in para 6 of its order has clearly noted that subject property is situated on the main road leading to Durgapura, Railway Station and is very close to Tonk Road connected with a pubic road leading towards eastern side to residential colonies which have come up in its neighborhood such as Vishnupuri and Mahavir Nagar on north side. Green Nagar and Arjun Nagar on eastern side and the vegetable oil factory of M/s.Rohtas Industries Ltd. on the western side.

The Appropriate Authority has made valuation of the subject property by

using not one but two modes. First mode adopted was by comparison with Plot No.A-19 of Triveni Nagar with adjustments referred to above being given when its value comes to Rs.99,84,500/- and if the depreciated value of the godowns in the sum of Rs.42 lacs is added thereto, total value of the subject property comes to Rs.1,37,21,532/- as against the apparent sale consideration of Rs.99,89,500/- which would reflect that the price of disputed property was declared at a much lesser value than was assessed by the Appropriate Authority by this mode. When however the valuation was made by the Appropriate Authority adopting another mode by accepting the argument of the appellants that for the purpose of comparison with the developed residential plots of Triveni Nagar, 34% of the land shall have to be left open and thus there would remain only 66% of the land, the value still worked out to Rs.1,04,58,548/- and that the amount of Rs.42 lacs as the depreciated value of the godowns being added thereto, total value of the said properly works out to Rs.1,46,58,548/- as against the declared

apparent sale consideration of Rs.99,84,500/-, again there being a huge difference between the value assessed by the Appropriate Authority and declared as the apparent sale consideration. In either of the modes, the difference between the apparent sale consideration and the assessed value being far more than 15%, there was thus an attempt on the part of the appellants to under value the property so as to evade the tax. No fault therefore can be found with the order of the Appropriate Authority in deciding to compulsorily purchase the subject property by recourse to provision contained in Chapter XXC of the Income Tax Act.

Coming now to the appeal filed by the vendor Smt.Mithilesh Kumari, the pleadings in this appeal begins with the apology why the vendor did not file an independent writ petition challenging the pre-emptive purchase order and explanation there for is that since she was impleaded as a party respondent to the writ petition filed by the prospective buyer, she “did not deem it necessary to multiply the litigation by

filing a separate writ petition herself but chose to await the result of the said writ petition since the judgment given therein would have been equally effective and application to all concern.” Yet the appellant Mithilesh Kumari has prayed for that the judgment passed by learned Single Judge as also the preemptive purchase order passed by the Appropriate Authority be set aside and the writ petition in terms of the prayers contained under the relief clause be allowed, but alternatively it has been prayed that the official respondents be directed to pay interest at the normal market rates on the balance amount of consideration for the period intervening the date when the consideration became payable under the agreement to sale and the actual date of its payment to the appellant. Shri B.L. Sharma, learned Senior Counsel appearing for the vendor has in support of his arguments relied on the judgment of Constitutional Bench of Hon'ble Supreme Court in Mrs. Rajalakshmi Narayanan Vs. Mrs. Margret Kathleen Gandhi & Ors., AIR 1993 SC 273, in which on account of interim order passed by the

Delhi High Court in a pending writ petition against the order of preemptive purchase made by the Appropriate Authority, the vendor was neither able to dispose of the property to the third party nor was able to receive sale price. In those facts, their Lordships held that in the event of the preemptive purchase order passed by the Appropriate Authority being upheld, government shall pay to the vendor the purchase price stated as the consideration for sale in the agreement with interest at the rate of 15% per annum. That was entirely distinguishable matter where even though the interim order was passed but the interest of the vendor was not protected in any manner. In the present case however the fact situation is entirely different. When the prospective buyers filed the writ petition, this Court vide order dated 19.4.94 while directing the parties to maintain status quo further directed that “the period during which the stay order remains in operation shall be excluded for making the payment by the respondent to the seller”. This order was later modified on 27.5.1994 upon the counsel or

the vendor making an argument that if the period of interim stay order is extended, she is likely to suffer loss in terms of interest on the amount which was payable to her and she should not be made to suffer because of this interim order. The learned Single Judge therefore while extending the stay order clarified that in case action of the Appropriate Authority is found untenable in law, the vendor shall be entitled to reimbursement of the loss occasioned to her. In order to meet this contingency, the official respondents immediately invested the amount of apparent sale consideration in the sum of Rs.99,88,500/- in the fixed deposit which we are informed was extended from time to time and is valid till date and the maturity value of such FDR as on 16.5.2006 was stated to be of Rs.2,67,81,932/-. We are however not inclined to entertain the the other prayers of appellant Mithilesh Kumari because she having not challenged the preemptive purchase order and twice submitted no objection to the Income Tax Department for the compulsory acquisition of the said property acquiesced in those

proceedings and is now estopped from challenging the said order.

Upshot of the above discussion is that in our view the present matter does not fall in any of those five categories which we had set out at the beginning of our discussion at pages 33 and 34 hereinabove, and therefore, in our considered opinion, the learned Single Judge did not commit any error of law in not interfering with the pre-emptive purchase order passed by the Appropriate Authority. We therefore do not find any merit in the appeal filed by the prospective buyers (SAW No.744/94) and the same is therefore dismissed but the appeal filed by the vendor (SAW No.188/95) is partly allowed with the direction that upon department taking over possession of the subject property, prospective buyers would be entitled to refund of the amount paid to the vendor together with interest @ 6% p.a., out of the maturity amount of the aforementioned FDR and remaining amount shall be paid to the vendor. In the facts of the case, however, we leave the parties to bear their own costs.

(Mohammad Rafiq),J. **(S.N. Jha),CJ.**

RS/-